

COLLECTIVE ACTION
(JURY TRIAL)

2. Defendant Strategic HVAC & Insulation LLC has a policy, enforced at all of its locations throughout Texas, denying Plaintiffs and putative class members compensation at time and a half, and paying only straight time for hours worked above forty (40) per week.

3. Defendant Strategic HVAC & Insulation LLC is a Domestic corporation with locations throughout Texas. Strategic HVAC & Insulation LLC may be served with process through its Registered Agent, Isaid E Mercado at 8907 Sterling Point Ln, Houston, Texas 77044.

4. Whenever in this complaint it is alleged that the named Defendant committed any act or omission, it is meant that Defendants' officers, directors, vice-principals, agents, servants, parent company, subsidiaries or employees committed such act or omission and that at the time such act or omission was committed, it was done in the routine normal course and scope of employment of Defendants' officers, directors, vice-principals, agents, servants, parent company, subsidiaries or employees.

5. To be clear, this complaint and the allegations contained herein are of the conduct of Defendant Strategic HVAC & Insulation LLC who maintained a uniform pay policy denying overtime wages to its Insulation Installers and paying them only straight time for hours worked above forty at all of its locations throughout the state of Texas.

6. Defendant Strategic HVAC & Insulation LLC hired and employed Plaintiff and putative class members at its Houston, Texas location and managed Plaintiff and putative class members throughout the course and scope of their employment.

7. Putative class members are all similarly situated Insulation Installers hired by Strategic HVAC & Insulation LLC who worked at Strategic HVAC & Insulation and were paid straight time instead of time and a half for hours worked above forty (40) per week.

JURISDICTION AND VENUE

8. This court has federal question jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

9. Venue is proper because defendants have locations in the Southern District of Texas and many of the relevant facts occurred there.

PARTIES

10. Rogelio Perez Barragan worked for Strategic HVAC & Insulation LLC as an Insulation Installer. His written consent is attached.

11. Plaintiff was hired and employed by Strategic HVAC & Insulation LLC at its Houston Texas location. The type of work performed by plaintiff was consistent with non-exempt employment under the FLSA. Defendant is therefore obligated to pay its non-exempt employees overtime under the FLSA.

12. The “FLSA Class Members” are all Insulation Installers who were hired and employed by Strategic HVAC & Insulation LLC at all locations throughout Texas, while not being paid time and a half for overtime hours worked in the last 3 years.

FACTS

13. Rogelio Perez Barragan was an employee of Strategic HVAC & Insulation LLC at its location in Houston, Texas. Mr. Barrera work for Defendant from December of 2015 until February of 2017.

14. Rogelio Perez Barragan was not an independent contractor.

15. No exemption to the provisions of the FLSA excused defendants from its obligation under the FLSA to pay Rogelio Perez Barragan time and a half for the hours worked past forty (40) each week while employed by defendants.

16. Strategic HVAC & Insulation, LLC paid Plaintiff Rogelio Perez Barragan straight time, not time and a half, for the hours he worked above forty (40) during his employment with defendants.

17. Plaintiffs job duties included applying insulating materials to ductwork.

18. The work performed by Plaintiff was the primary type of work that the companies provide for their respective customers.

19. The work performed by Plaintiff was an essential part of the services provided for Defendant's Customers.

20. Strategic HVAC & Insulation LLC's Insulation Installers relied on Defendant for their work.

21. Strategic HVAC & Insulation LLC determined where its Insulation Installers worked and how they performed their duties.

22. Strategic HVAC & Insulation LLC set Insulation Installers' hours and requires them to report to work on time and leave at the end of their scheduled hours.

23. Strategic HVAC & Insulation LLC's Insulation Installers at all locations work exclusively for Strategic HVAC & Insulation LLC.

24. Insulation Installers are not permitted to hire other workers to perform their jobs for them.

25. The Insulation Installers do not employ staff, nor do they maintain independent places of business.

26. Insulation Installers employed by defendant are paid based upon the hours they work. They cannot earn a "profit" by exercising managerial skill, and they are required to work the hours required by Strategic HVAC & Insulation LLC each day.

27. The Insulation Installers employed by Defendant cannot suffer a loss of capital investment. Their only earning opportunity is based on the number of hours they were told to work, which is controlled exclusively by Strategic HVAC & Insulation LLC.

28. Strategic HVAC & Insulation LLC pays Insulation Installers in return for their labor.

29. Strategic HVAC & Insulation, LLC deducted taxes from the paychecks of Plaintiff and similarly situated employees.

30. Strategic HVAC & Insulation, LLC keeps records of the hours it instructed its Insulation Installers to work. It also keeps records of the amount of pay plaintiffs and putative class members receive. Plaintiffs and putative class members were paid directly via bi-weekly pay check.

31. Despite knowing of the FLSA's requirements and that Plaintiff and putative class members regularly worked more than 40 hours in a workweek, Defendant paid them straight time instead of time and a half for the overtime hours that they worked.

32. Plaintiff and putative class members seek unpaid overtime wages for the three year period of time preceding the filing of this lawsuit.

COLLECTIVE ACTION ALLEGATIONS

33. In addition to Rogelio Perez Barragan, defendant employed dozens of other Insulation Installers at the location where Plaintiff worked and at other locations. These employees worked over forty hours per week and were paid straight time instead of time and a half for overtime hours worked. These FLSA Class Members performed similar job duties and they were subjected to the same unlawful policies. The FLSA Class Members are similarly situated to Rogelio Perez Barragan.

34. The FLSA Class Members should be notified of this action and given the chance to join pursuant to 29 U.S.C. § 216(b). Therefore, the class is properly defined as:

All Insulation Installers employed by Strategic HVAC & Insulation LLC while receiving straight time instead of time and a half for overtime hours worked in the last three years.

CAUSE OF ACTION – VIOLATION OF THE FLSA

35. By failing to pay Plaintiff and the FLSA Class Members overtime at one and one-half times their regular rates, Strategic HVAC & Insulation LLC violated the FLSA.

36. Strategic HVAC & Insulation LLC owes Plaintiff and the FLSA Class Members overtime wages equal to one-half their regular rates for each overtime hour worked during the last three years.

37. Strategic HVAC & Insulation LLC knew, or showed reckless disregard for whether, its failure to pay overtime violated the FLSA. Its failure to pay overtime to Plaintiff and the FLSA Class Members is willful.

38. Strategic HVAC & Insulation LLC owes Plaintiff and the FLSA Class Members for an amount equal to all unpaid overtime wages as well as liquidated damages.

39. Plaintiff and the FLSA Class Members are entitled to recover all reasonable attorneys' fees and costs incurred in this action.

PRAYER

Plaintiff prays for relief as follows:

1. An order allowing this action to proceed as a collective action under the FLSA and directing notice to the FLSA Class Members;
2. Judgment awarding Plaintiff and the FLSA Class Members all unpaid overtime compensation, liquidated damages, attorneys' fees and costs under the FLSA;
3. An award of post-judgment interest on all amounts awarded at the highest rate allowable by law; and
4. All such other and further relief that Plaintiff and the FLSA Class Members are justly entitled.

Respectfully submitted:

THE FOLEY LAW FIRM

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